

SERVED: August 19, 1992

NTSB Order No. EA-3641

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 10th day of August, 1992

Petition of)	
)	
DAVID McKNIGHT)	
)	
for review of the denial by)	Docket SM-3902
the Administrator of the)	
Federal Aviation Administration)	
of the issuance of an airman)	
medical certificate.)	
)	

ORDER DENYING RECONSIDERATION

Petitioner seeks rehearing, following our May decision in NTSB Order EA-3566, affirming the Administrator's denial of a medical certificate. The Administrator has replied in opposition. We deny the petition.

In our May decision, we affirmed findings that petitioner suffered from a psychosis some time in the past, and that he had a personality disorder, neurosis, or mental condition that made him unable currently or within 2 years safely to perform aviation tasks. Petitioner, therefore, was ineligible, pursuant to 14 C.F.R. § § 67.17(d)(1)(i)(b) and (d)(1)(ii), for a medical certificate.

The petition for rehearing seeks reopening to consider allegedly new evidence concerning the (d)(1)(i)(b) finding. Petitioner alleges that the testimony of two doctors who saw him at the time the psychosis was diagnosed is now available and the case should be remanded to the law judge to consider it.¹ Short

¹As petitioner acknowledges, the diagnosis can be impeached

letters from these doctors are attached to the petition.

We agree with the Administrator that this is not new evidence and rehearing should not be granted. Although petitioner claims that, despite earlier due diligence he was unable to locate these two physicians, the Administrator has demonstrated the contrary. Both were available and could have easily been located. One continued to work at the same hospital where petitioner had encountered him. The other was listed in the American Medical Directory. Because due diligence in attempting to locate these individuals has not been shown, rehearing on this basis is not justified. See Administrator v. Smith, NTSB Order EA-3558 (1992), at 5. Accord Administrator v. Porter, 2 NTSB 1898 (1976).²

Following the filing of the petition for rehearing, petitioner filed a supplement to his brief. This supplement contains a number of letters, including letters from his father, and from certain of the physicians whose testimony we considered in reaching our May decision. This filing is not authorized under any of the Board's rules, and it will be rejected. Petitioner may not in this manner reargue the merits of our prior decision.

(..continued)

two ways: reversal by the original physician or with a contrary, contemporaneous diagnosis by another physician, whose diagnosis may be given greater weight. This evidence is directed to the second method of impeachment.

²Thus, we need not revisit Petition of Still, 4 NTSB 139 (1983), as the Administrator urges. In any case, the cases are distinguishable on the facts.

Moreover, testimony from these two individuals would not appear to change the result. One of them has no apparent psychiatry expertise and performed no psychological evaluation of petitioner. The other offers no reason to call our prior conclusion into question. Moreover, neither had the depth or extent of contact with petitioner as did the other doctors whose testimony we considered in our May decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. Petitioner's request for rehearing is denied; and
2. "Petitioner's Rehearing Appeal Brief Supplemental" is rejected.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.